

**Minutes**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Special Meeting/Public Hearing to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
August 24, 2018 at 1:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Valiant, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, Assistant Director.

**MEMBERS ABSENT:** None

Chairman, Jeff Valiant explained the rules of procedure.

**BZA-SU-18-14**

**APPLICANT:** Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits

**OWNER:** Alcoa Fuels Inc, Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

**PREMISIS AFFECTED:** 2,720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile Northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

**NATURE OF CASE:** Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a “CON” Conservancy & Recreational Area and “A” Agricultural Zoning District. (Advertised in the Standard July 5, 2018.) *Continued from July 18, 2018.*

Dirk Stahl, attorney for Liberty Mine and John Henderson, Counsel for Alcoa were present.

Chairman Valiant requests staff report.

Sherri Rector refers to Attorney Morrie Doll for input.

Attorney Doll stated we had set this special meeting up to give various parties on both sides to those questioning the opportunity to negotiate to see if they could reach certain agreements on issues yet to be resolved at that time. He said today was a time and date set for the special meeting. He asked would they like to give us a status report at where they are with their meeting thus far.

Dirk Stahl said that was fine. He said he should mention John Henderson was there with him as well. He said he was the council for Alcoa. He stated he was there for Alcoa Warrick and Alcoa Fuels, both. He said he did not believe anyone was there for the other landowners, but Alcoa owns the vast majority of the permit area. He said they were still in discussions. He said there have been a number of matters that Liberty and the Alcoa entities have been working on and have been trying to analyze based on information they received at a court ordered settlement conference that occurred in July. He said they had continued to work towards a resolution. He said they believed that, it was his impression that the parties all wanted to get this resolved and to reach an agreement as to a number of things. He said some days he thought they were closer than others, but it was something they were asking the Board to continue so that they could keep working towards that. He said he thought it would be a more efficient process if they could get everything worked out and multiple forums that they were working on, including the Warrick Superior Court and the Natural Resources Commission in Indianapolis, so they could coordinate everything and come in here before the Board with everyone on the same page. He said obviously, there may be other remonstrators as to the quest, or to the petition, but that was the goal. He said what they were asking for at this point, because they do not know when there would be a resolution and they would not want to continue burdening the Board members with having to show up for a special meeting and being told they are still talking. He said the request would be for this matter to be continued from today and placed on the Board's regular meeting docket for September. He said at which time they would report whether they have reached an agreement or not and the Board could make a determination whether or not to hear the matter that night, schedule another special meeting, or continue it over to the next month.

Mike Winge asked if they had any idea how long these negotiations are going to take if we continue it.

Dirk Stahl replied he did not and that was the reason why they were recommending that this be placed back on the regular meeting agenda. He said he would hope they would be able to come here September 24<sup>th</sup> and tell the Board that they had it resolved, or that they had at least almost resolved it and that they would only need one more month to get it done. He said when there are a number of parties and frankly, Mark represents dozens of people and they had to reach consensus on their side, and Alcoa had people that need to reach consensus on their side. He said he was kind of the little person as far as only having a few people that he had to corral, but it just makes it very uncertain as far as how long it would take.

Attorney Doll said so all parties were aware that was the intent of this meeting, to ask for this to be continued to September 24<sup>th</sup> to our regular scheduled meeting at 6:00 pm.

Dirk Stahl asked all the parties that were on the emails that we had exchanged.

Attorney Doll said all the main groups, well the applicants, the property owners, and the remonstrators.

Dirk Stahl replied right.

Attorney Doll asked if they were aware of that.

Dirk Stahl replied right.

Attorney Doll said okay, so if the wish of the Board was to accommodate by giving them additional time to negotiate, which he recommends, because this was an unusual case. He said not only was it an application for an SU-13, but it was simultaneously a lawsuit involving the city of Boonville and everybody else in Superior Court with a special judge and simultaneously it involves the permitting process before the Indiana Department of Natural Resources as well. He said it did have many moving parts. He said if the Board was inclined with being cooperative with the applicants and the property owners to do that then it would take a motion to continue this until September 24<sup>th</sup> at 6:00 pm. He said now there was some debate whether the Board would want to say okay they are not going to continue it beyond that or not. He said he really does not recommend you do that, because we do not know all the parameters of the negotiations that will develop between now and then. He said he would like to see this come to an end and he was sure the applicant would, the property owners would, and everybody would like to see this. He stated it had been his experience that artificial barriers to ending dates did not necessarily encourage them to happen. He stated having said that, it will take a motion, a second, and a vote...

Mike Winge said he had a question. He said in the event, let's just say if they came back to the next regular meeting and they did not have their attorneys' or anything here at some point if we felt like that we need to deal with it we just tell them at that point they had to be ready by the next regular scheduled meeting.

Attorney Doll said that is one way you could deal with it, but he was positive that at the next regular meeting, the 6:00 o'clock meeting... well he should not say that. He stated he suspected all parties would be represented at the next regular meeting. He said he couldn't imagine that they wouldn't be or else there would be a document present or something of what their agreement may be, perhaps. He said he presumed they were working towards getting some kind of a documentation.

Dirk Stahl replied yes.

Attorney Doll said Mike, he does not know that yet, the Board would just have to see.

John Henderson, representative for Alcoa, said he would like to speak to that to try to answer his question. He said he represented Alcoa. He said the reason this day was chosen in part was because there was originally a hearing scheduled in front of the Department of Natural Resource Council for Wednesday and Thursday of that week that would kind of give them the chance to end all this, but it did not. He said Alcoa really hoped to have had a settlement day and are committed to trying to work to that. He said for those people who had read the paper or seen the pleadings they had probably seen the list of points the homeowners and Alcoa had kind of agreed to in principal but they had not had a structure that worked for everybody. He said the Superior Court action gave both parties a way to reach a settlement so they could actually get on the same

page with a settlement. He said he thought they had a mechanism to do that; that Alcoa was still willing to do those things that were listed in that email exchange that was put in the court record. He said including extending the bumpers out 800 ft from the 300 ft where they were giving the homeowners this modified insurance process, or expedite insurance process, they would like to get. He said they were prepared to do the settlement and they thought they had a way to do that. He said if they could all get together in front of a court and everybody get on the same page and just... He said like Dirk said, Mark had many clients to deal with, but if they could all come together hopefully in the next month they would be back here on September 24<sup>th</sup> and say they had an agreement.

Attorney Doll asked if they had a hearing date or anything in front of the court at this time.

John Henderson answered no they had talked about whether they needed to try to schedule that but no. He said part of that is after Judge Held reached his decision they had a deadline of whether or not they were going to file an appeal so there was also an appeal before the Indiana Supreme Court of his ruling.

Attorney Doll asked Supreme or Court of Appeals.

John Henderson verified Supreme Court. He said they made a motion for the Supreme Court to take the case directly from Superior Court.

Attorney Doll said oh, okay.

John Henderson said hopefully, with a lot of moving parts as Attorney Doll said, but hopefully they could get all-rooting in the same room and get it resolved. He said he thought as Dirk and everybody had said, they would like to get it resolved and Alcoa would like to do that too.

Terry Dayvolt asked why they would continue it. He stated why not just tell the Board when they get their eggs and ducks in a row to come back and reapply.

Attorney Doll replied under the rules there was a procedure to continue it in which the applicant may ask for it to be continued. He said that would be Dirk's client, he believed they were the applicant.

Dirk Stahl added it was actually the property owner that made the request, but...

Attorney Doll stated Liberty Mine LLC.

Dirk Stahl said yeah they were both asking.

John Henderson agreed by stating yeah.

Attorney Doll said he would ask for it to be continued under their procedure rules. He said he thought it could be continued for up to three times to the third ordinary meeting, regularly

scheduled meeting. He said he would rather not have the Board continue it indefinitely and he did not think that would probably be the wishes of the applicants either that it be continued indefinitely.

Dirk Stahl said no and frankly having it on the agenda for a regular meeting does not require the Board members to show up for something that they would not show up for otherwise. He said you would already be there presuming you had other matters on the agenda.

Mrs. Rector said yes we are going to have a meeting anyway whether it is with them or not.

Terry Dayvolt said but the reason they had the special meeting was because of remonstrators. He stated the Board wanted to give everybody a chance and six o'clock in the evening until four o'clock in the morning did not work real well...(inaudible)

Mrs. Rector added Terry that was what the Board was trying to do. She said if the Board said the 24<sup>th</sup> and they came and said they are just not going to reach any agreement and the Board felt that there was going to be an overflowing room full, then the Board could make a motion to hold a special meeting at that time for during the day.

Attorney Doll added on September 24<sup>th</sup> if the evidence was they would have a knockdown, drag out hearing with many different people that wanted to testify, this Board could say they were not doing it tonight they would set a special meeting in October, or whenever the Board wishes. He said the Board could move it back to a special meeting, but in the meanwhile, Sherri would have to advertise, it would come out of her budget, and everything else. He said they kept setting this for special meeting after special meeting and they did not want to do that.

Terry Dayvolt said if they could just leave it on the docket... (inaudible)

Attorney Doll said send it back to the regular docket and then they would see if it would get resolved. He said it could be, too, that there may be eight points of contention and they may get an agreement on six of those points, and you may come in then and say they had agreed on everything but these last two points. He added then the Board would hold a hearing and decide if they were going to accept their six points and then okay who wants to speak to the last two contested issues, and limit the presentation to those issues and maybe there would be an individual remonstrator who had something nobody had thought of. He said maybe that had to be taken into consideration as well.

Chairman Valiant said to correct him if he was wrong but he thought that was why the applicant is moving so slow, to walk in here with a clear picture of what was going on and so he appreciated that himself.

Attorney Doll added exactly.

Terry Dayvolt said yes but he did not appreciate to be drawn away from business.

Sherri Rector added that was why they were not asking the Board to do it anymore.

Attorney Doll stated that was why the Board was shifting it back to regular meetings. He said but it was a 3,000 acre development. He said he did not think it was something insignificant.

Terry Dayvolt said he understood but neither was what some of us were...

Attorney Doll stated we had to follow the law and make it right.

Terry Dayvolt said he understood and appreciated that.

Mrs. Rector says okay so the Board needed a vote.

Mike Winge made the motion to continue until the next regularly scheduled board meeting.

Mike Moesner seconded the motion and it unanimously carried.

Terry Dayvolt said concerning those special meetings, I thought if someone requires or asks for a special meeting there should be a fee for a different meeting. He added because of the postage and all that.

Mrs. Rector asked what postage.

Terry Dayvolt said what had to be advertised and things like that.

Mrs. Rector said the office did not mail anything out it was all emailed out. She said the office had to post agendas and send them to the newspaper but the expense was the per diems for the Board to be here. She added she did not know legally if the Board could send a bill. She added if they did pay it back it would just go in the general fund, it would not go back into the Planning Commission budget.

Terry Dayvolt stated okay well if it would not go in there then forget it.

Mike Winge made the motion to adjourn the meeting.

Mike Moesner seconded the motion.

Ascertaining there was no other business the meeting adjourned at 1:18 p.m.

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Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held August 24, 2018.

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Sherri Rector, Executive Director